

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

In re:

CASE NO: 19-73597-SCS

Address: MICHAEL JOSEPH BENTON  
AND VANGINETTE H  
BENTON,  
5904 HAMPSHIRE GREEN  
PORTSMOUTH, VA 23703

CHAPTER 13

Debtor(s).

**NOTICE OF MOTION**

Truist Bank, Successor by merger to SunTrust Bank, a creditor in this case, has filed papers with the court to allow a loan modification with regard to certain property more particularly described in those papers which are attached.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you want the Court to consider your views on the Motion, then you or your attorney must:

File with the Court, at the address shown below, a written response. If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it, in accordance with Local Rule 9013-1(H), on or before **August 28, 2021**

United States Bankruptcy Court  
Norfolk Division  
600 Granby Street, Room 400  
Norfolk, VA 23510-1915

You must also mail a copy of any such response to:

M. Christine Maggard, Esquire  
Brock & Scott, PLLC  
8757 Red Oak Blvd., Suite 150  
Charlotte, NC 28217

M. Christine Maggard, VSB# 33824  
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*Counsel for the Movant*

## **REMOTE HEARING INFORMATION:**

Due to the COVID-19 public health emergency, no in-person hearings are being held.

This hearing will take place remotely through Zoom on **September 3, 2021 at 10:00 AM.**

To appear at the hearing, you must send, by email, a completed request form (the “Zoom Request Form”), which is available on the Court’s internet website at [www.vaeb.courts.gov](http://www.vaeb.courts.gov), on the page titled, “Temporary Emergency Provisions Regarding ZoomGov Remote Proceeding Access Information.” Email your completed Zoom Request Form to the email address listed for the Judge assigned to the case. Following receipt of your Zoom Request Form, Court staff will respond to the email address from which the request was submitted with additional information on how to participate through Zoom.

\*\*\*The email address shall be used only to submit Zoom Request Forms. No other matters or requests will be considered by Court staff, and under no circumstances will any such matters or requests be brought to the Judge’s attention. Failure to comply with these instructions may result in appropriate action, including but not limited to the imposition of sanctions.\*\*\*

PLEASE NOTE: You MUST submit the Zoom Request Form no later than two (2) business days prior to this hearing. Any documentary evidence the parties wish to present at the hearing must be filed with the Court in advance of the hearing.

If no timely response has been filed opposing the request, the Court may grant the Motion.

If you or your attorney do not take these steps, the Court may decide that you do not oppose and may enter an Order granting the Motion

Dated: July 28, 2021

Respectfully submitted,

/s/ M. Christine Maggard  
M. Christine Maggard, VSB# 33824  
Brock & Scott, PLLC  
8757 Red Oak Blvd., Suite 150  
Charlotte, NC 28217  
[christine.maggard@brockandscott.com](mailto:christine.maggard@brockandscott.com)  
*Counsel for the Movant*

## **CERTIFICATE OF SERVICE**

The foregoing Notice was endorsed by and/or served upon all necessary parties pursuant to Local Rules by electronic notification and/or U.S. First Class Mail, postage pre-paid.

\*\*\* see attached matrix \*\*\*

/s/ M. Christine Maggard

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*Counsel for the Movant*

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**MOTION FOR APPROVAL OF MODIFICATION OF EXISTING SECURED DEBT**  
**NUNC PRO TUNC**  
**(Deferment of Forborne Payments)**

COMES NOW, Truist Bank, Successor by merger to SunTrust Bank, and its successors and assigns, by and through its legal counsel, pursuant to 11 U.S.C. § 1303, 11 U.S.C. § 363, and Local Bankr.R.9013-1, moves for the approval of an agreement entered between Truist Bank, Successor by merger to SunTrust Bank and Michael Benton and Vanginette Benton (hereinafter “Debtor”), to place forborne payments at the end of the loan, and respectfully represents as follows:

1. Jurisdiction is based on 28 U.S.C. §§ 151, 157(b) and 1334. The relief may be granted in accordance with the provisions of 11 U.S.C. §§ 105(a).
2. On or about September 27, 2019, Debtor filed a voluntary petition in this Court under Chapter 13 of the United States Bankruptcy Code.
3. Truist Bank, Successor by merger to SunTrust Bank is a secured creditor of the Debtor and its interest is evidenced by a promissory note (“Note”) dated August 27, 2012 and executed by Debtor in the original principal amount of \$85,000.00, with interest at the original note rate of 4.600%. A copy of the Note is attached hereto.

4. Said Note is secured by a certain Deed of Trust also dated August 27, 2012 and recorded as instrument number 120008999, among the land records of Portsmouth City, VA (“Deed of Trust”) and improved by a residence known as 808 TAFT DR, Portsmouth, VA 23701, and is more particularly described as follows:

**ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Portsmouth, Virginia, being known, numbered and designated as Lot 64, as shown on that certain plat entitled, “Cavalier Manor, Section 18B, Portsmouth, Virginia”, which said plat is duly recorded in the Clerk’s Office of the Circuit Court of the City of Portsmouth, Virginia, in Map Book 54, at page 10.**

**IT BEING the same property conveyed to Michael J. Benton by deed of gift from Barbara J. Fuller and Ellis Fuller, husband and wife, and Selena Lundy and Allen Lundy, husband and wife, dated June 28, 2010 and recorded June 30, 2010 as Instrument Number 100006159.**

A copy of the Deed of Trust is attached hereto.

5. On November 27, 2017, Secured Creditor filed a filed a Proof of Claim (Claim No. 21-1) indicating a total debt of \$63,369.43.

6. Recently, the Debtor applied for and was approved for a Deferral of Payments with Truist Bank, Successor by merger to SunTrust Bank.

6. The proposed Payment Deferment/loan modification agreement (hereinafter, the “Agreement”) was executed by the Debtor and is attached hereto. The Agreement contains material terms as follows:

(a) The loan terms are not changed except that the deferred amount of \$6,364.94 will be added to the end of the loan, paid upon refinance, or sale of the property.

7. The monthly payment amount of the secured claim is \$816.08. This amount includes real estate taxes and hazard insurance to be escrowed by the holder of the modified secured claim. The monthly escrow amount information will be provided to the Debtor in the monthly

billing statement. As the forborne payments have been added to the end of the loan, the monthly payment amount is not changed by the deferral.

8. The Agreement described is in the best interest of the Debtor, the creditor, and the bankruptcy estate. The Agreement would assist the Debtor in effectively reorganizing debt by lowering the Debtor's monthly mortgage payment obligation and by allowing Debtor to retain the Property in an affordable manner, and maintaining the loan in a current status after a covid related forbearance.

9. The Agreement furthers the intent and purpose of the Chapter 13 Plan and increases its feasibility.

10. No creditor other than Truist Bank, Successor by merger to SunTrust Bank and no other liens on the real property are affected by the relief requested and the loan modification will not alter or affect the status or priority of any other existing liens on the real property.

**WHEREFORE**, Truist Bank, Successor by merger to SunTrust Bank, prays that this Court:

1. Enter an order granting the Motion for Approval of Modification of Existing Secured Debt- Deferral of Payments *NUNC PRO TUNC*; and
2. Grant such other and further relief as may be just and necessary.

Dated: July 28, 2021

/s/ M. Christine Maggard  
M. Christine Maggard, VSB# 33824  
Brock & Scott, PLLC  
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christine.maggard@brockandscott.com  
*Counsel for the Movant*

**CERTIFICATE OF SERVICE**

The foregoing Motion was endorsed by and/or served upon all necessary parties pursuant to Local Rules by electronic notification and/or U.S. First Class Mail, postage pre-paid.

\*\*\* see attached matrix \*\*\*

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**Summary of the Proposed Loan Modification**

1.

	<u>Original Loan</u>	<u>Modified Loan</u>
Principal Amount	\$58,672.74	\$65,037.68
Interest Rate	4.600%	4.600%
Term or Maturity Date	September 1, 2032	September 1, 2032
Monthly Payment	\$816.08	\$816.08

2. The Modified loan includes future payment changes or balloon payments. The terms of any such future payment changes or balloon payments are: **Total Past-due amounts to be deferred \$6,364.94**

3. The modification results in a higher monthly payment. The source(s) of the funds used to make that payment is/are: **Agreement does not result in higher regular monthly payments until such time as the last payment is due.**

4. The Modification does not result in a lower monthly payment.



Dated: July 28, 2021

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